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10/608,428

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William Christopher Draper JR.

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WASHINGTON, DC 20004

EXAMINER

CARDENAS NAVIA, JAIME F

ART UNIT

PAPER NUMBER

3624

NOTIFICATION DATE

DELIVERY MODE

02/03/2010

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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| | | | |
|------------------------------|---|--------------------------------------|--|
| Office Action Summary | Application No. 10/608,428 | Applicant(s) DRAPER ET AL. | |
| | Examiner Jaime Cardenas-Navia | Art Unit 3624 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 July 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31,32 and 34-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31,32 and 34-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Introduction

1. This **FINAL** office action is in response to communications received on July 20, 2009. Claims 31, 32, 34-38, and 40 have been amended. Claims 21-30 and 32 have been cancelled. Claims 31, 32, and 34-40 are currently pending.

Response to Amendment

2. **Applicant's admission** that all claim limitations which were discussed in the rejection under 35 U.S.C. § 112 first paragraph in the preceding Office Action are within the skill level of a person having ordinary skill in the art **overcomes the 35 U.S.C. § 112, first paragraph, rejections** set forth in the previous office action.

3. Applicant's amendments to the claims are **sufficient to overcome the 35 U.S.C. § 101 rejections** set forth in the previous office action.

Response to Arguments

4. Applicant's arguments have been fully considered by the Examiner. In particular, Applicant argues that:

(A) regarding independent claim 31, Bull does not teach or suggest "forecasting future demand for the course based on the delivery criteria;"

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(B) regarding independent claim 31, Bull does not teach or suggest "indexing and storing the course when it is no longer utilized;"

(C) regarding independent claim 31, Bull does not teach or suggest "delivering a field test of the course to evaluate course content;"

(D) regarding dependent claim 39, Examiner's taking of Official Notice that "outsourcing training to an independent entity that is acting according to a service level agreement" is improper;

(E) regarding dependent claim 40, neither Bull, Hollingsworth, nor Simmons teach or suggest forecasting future demand using the claimed delivery criteria; and

(F) all dependent claims are allowable based on arguments (A) – (E).

Regarding argument (A), Examiner respectfully disagrees. Under the broadest reasonable interpretation, Bull teaches "forecasting future demand for the course based on the delivery criteria." In col. 3, lines 50-62, Bull describes creating course sections to handle course enrollment that exceeds what can be handled by available facilities. Bull's teaching of tracking enrollment for individual course sections certainly anticipates forecasting future demand, as the courses haven't yet occurred and are prepared for in advance. 'Forecasting' is defined as making a prediction about the future, so the addition of the term 'future' is redundant.

Additionally, algorithms for forecasting demand are very well-known.

Regarding argument (B), Examiner respectfully disagrees. Col. 3, lines 24-38 clearly teach "indexing and storing the course when it is no longer utilized." A worker's training activities are tracked so that their progress can be tracked and courses can be identified that the

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worker must complete. It is implied that courses are indexed and stored when not being used, as new workers will likely need to be trained in the subject matter of past courses.

Regarding argument (C), new grounds of rejection, necessitated by amendment, are presented below.

Regarding argument (D), Examiner would like to note the requirements for traversing official notice from MPEP § 2144.03:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b).

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate [emphasis added].

Examiner does not believe that Applicant has adequately traversed the finding of Official Notice, as no specific errors have been pointed out. Examiner continues to assert that this claim element is capable of 'instant and unquestionable demonstration as being well-known,' as any google search of 'outsourcing training' will yield education outsourcing companies that have been in operation for decades. However, Examiner has provided an additional reference for this claim element in the rejection below.

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Regarding argument (E), Examiner respectfully disagrees. All of the delivery criteria used to forecast future demand is taught either explicitly or implicitly in at least Bull. Col. 3, lines 24-61 of Bull teach tracking courses workers should attend (course content, student demand) and possibly breaking up the course into sections based on enrollment size (student demand, instructors, facilities, equipment use, course medium type).

Regarding argument (F), Examiner relies on the response to arguments (A) – (E).

Official Notice

5. The Examiner would like to note the requirements for traversing official notice from MPEP § 2144.03:

To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art. See 37 CFR 1.111(b).

If applicant does not traverse the examiner's assertion of official notice or applicant's traverse is not adequate, the examiner should clearly indicate in the next Office action that the common knowledge or well-known in the art statement is taken to be admitted prior art because applicant either failed to traverse the examiner's assertion of official notice or that the traverse was inadequate [emphasis added].

Because Applicant has not specifically pointed out any errors in the Examiner's action, the officially noticed facts in the previous office action are deemed admitted prior art.

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Claim Rejections - 35 USC § 103

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. **Claims 31, 32, 34-38, and 40 are rejected** under 35 U.S.C. 103(a) as being unpatentable over Bull (US 6,409,514 B1) in view of Official Notice and Munson ("Description and Field Test of a Career Development Course for Male Youth Offenders with Disabilities." *Journal of Career Development*, Vol. 20(3), Spring 1994).

Regarding claim 31, Bull teaches a computer-implemented method for training members of an organization (Abstract), comprising the following steps executed on a computer:

receiving data regarding subject matter of a course (col. 3, lines 24-61);

forecasting future demand for the course based on the delivery criteria (col. 3, lines 50-62);

scheduling delivery of the course (col. 3, lines 24-32, 36-38, 53-57);

managing the under and over-utilization of at least one of courses, instructors, facilities, delivery equipment or distance learning services by at least one of canceling, rescheduling or adding courses based on demand (col. 3, lines 24-32, 36-38, 53-57);

training an instructor of the course prior to delivering the course;

delivering the course (col. 4, lines 14-18); and

collecting data after course delivery (col. 4, lines 14-18); and

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at least one of indexing and storing the course when it is no longer utilized (col. 3, lines 24-38).

Bull does not explicitly teach:

establishing delivery criteria to prioritize delivery of the course;

delivering a field test of the course to evaluate the course content;

Official Notice is given that establishing delivery criteria to prioritize delivery of the course was old and well-known at the time of the invention. This was also admitted in Applicant's Arguments/Remarks to the previous Office Action.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage in improved course delivery.

Munson teaches delivering a field test of the course to evaluate the course content (p. 206, lines 7-12).

The inventions of Bull and Munson pertain to providing education services. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Munson does not teach away from or contradict Bull, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the

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time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage in improved course delivery brought about through field tests.

Regarding claim 32, Bull teaches:

monitoring data collected during course delivery (col. 4, lines 14-18),
generating performance reports (col. 4, lines 14-18, electronically notifying worker of performance),

archiving course content (col. 3, lines 51-61, inputting courses),

receiving requests for training (fig. 1),

creating training proposals (fig. 1),

managing facilities and/or equipment used in the course (col. 3, lines 24-61), and

providing information to communicate with the relevant target audience (fig. 1-3).

Bull does not explicitly teach creating cost forecasts, defining instructor certification criteria, monitoring instructor quality, and determining whether course materials can be delivered to another locale.

Official Notice is given that creating cost forecasts, defining instructor certification criteria, monitoring instructor quality, and determining whether course materials can be delivered to another locale were well-known to one skilled in the art at the time of the invention. This was also admitted in Applicant's Arguments/Remarks to the previous Office Action.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the

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time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage in improved course delivery.

Regarding claim 34, Bull teaches:

ordering, reproducing, or delivering course materials (col. 3, 4, implied),
preparing the course location for course delivery (col. 3, 4, implied),
at least one of collecting student rosters or assessments (fig. 1-3, col. 3, 4, worker's performance, course sections), and
distributing student certificates (col. 4, certifications).

Regarding claim 35, Bull does not explicitly teach wherein delivering the course is followed by

storing student assessments,
suggesting facility and equipment improvements, and
reviewing the quality of instruction.

Official notice is given that storing student assessments, suggesting facility and equipment improvements, and reviewing the quality of instruction is old and well-known.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the well-known advantages to improving processes through feedback.

Regarding claim 36, Bull does not explicitly teach:

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delivering the course via virtual instructor led training, self-paced training delivered via computer, or some combination thereof.

Official notice is given that all these methods of delivering courses are old and well-known.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the cost and flexibility advantages of multiple means of teaching.

Regarding claim 37, Bull teaches:

managing information that includes instructor names (col. 1, lines 33-46), instructor skills, course location (col. 1, lines 33-46), course delivery method, estimated expenses for the course, or materials and equipment used.

Bull does not explicitly teach wherein scheduling of courses utilizes a tool which assists in creating non-conflicting course sessions.

Official notice is given that a tool which assists in creating non-conflicting course sessions is old and well-known.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the

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time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the cost-savings from avoiding scheduling conflicts and the teaching in Bull of creating course sections if necessitated by available facilities.

Regarding claim 38, Bull does not explicitly teach wherein training an instructor of the comprises the following steps executed on a computer.

certification of knowledge of the subject matter of the course, certification of presentation skills, and certification of effective use of delivery mechanisms.

Official notice is given that these types of certifications are old and well-known.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the advantage in improved training by having certified instructors.

All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the potential resource savings achieved by outsourcing certain business services to specialized service providers.

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Regarding claim 40, Bull teaches wherein the delivery criteria used to forecast future demand is selected from the group consisting of:

course content (col. 3, lines 24-61), course media type (col. 3, lines 24-61), student demand (col. 3, lines 26-30, fig. 1-3), instructors (col. 1, lines 33-46, col. 3, lines 24-61), facilities (col. 1, lines 33-46, location, col. 3, lines 24-61), equipment use (col. 3, lines 24-61), and any combination thereof (col. 1, lines 33-46, col. 3, lines 24-61).

8. **Claim 39 is rejected** under 35 U.S.C. 103(a) as being unpatentable over Bull (US 6,409,514 B1) in view of Official Notice and Munson ("Description and Field Test of a Career Development Course for Male Youth Offenders with Disabilities." *Journal of Career Development*, Vol. 20(3), Spring 1994), as applied above to claims 31, 32, 34-38, and 40, further in view of Raytheon ("How Raytheon Got Into the Training Outsourcing Business," http://www.raytheon.com/businesses/other/rps/ten_reasons/our_history/index.html, visited on 01/08/2010).

Regarding claim 39, Bull does not explicitly teach wherein the delivery system is implemented by at least one of:

outsourcing training to an independent entity that is acting according to a service level agreement, or

one of the units of the organization which meets performance metrics, allocates costs of the training, and bills other units for the training.

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Raytheon teaches that outsourcing training to an independent entity that is acting according to a service level agreement is old and well-known (p. 1, Raytheon has been winning contracts for providing training services for decades).

The inventions of Bull, Munson, and Raytheon pertain to providing education services. All the claimed elements were known in the prior art and one skilled in the art could have combined the elements as claimed by known methods with no change in their respective functions, as Raytheon does not teach away from or contradict either Bull or Munson, but rather, teaches a function that was not addressed. The claimed invention is merely a combination of old and well-known elements, and the combination would have yielded predictable results to one of ordinary skill in the art at the time of the invention. Thus, it would have been obvious to combine the teachings, motivated by the well-known potential cost-savings of outsourcing training.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jaime Cardenas-Navia whose telephone number is (571)270-1525. The examiner can normally be reached on Mon-Fri, 10:30AM - 7:00PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bradley Bayat can be reached on (571) 272-6704. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

January 11, 2010

/J. C./

Examiner, Art Unit 3624

/Bradley B Bayat/

Supervisory Patent Examiner, Art Unit 3624